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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,751	10/01/2001	Emmanuelle Belli	13833.0008	3618

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EXAMINER

HUI, SAN MING R

ART UNIT PAPER NUMBER

1617

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/966,751

Applicant(s)

BELLI, EMMANUELLE

Examiner

San-ming Hui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 18, 2002 has been entered.

The amendments filed November 18, 2002 have been entered.

Claims 26-40 are pending.

Applicant is advised that should claim 26 be found allowable, claim 40 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

As referring to the instant specification, page 6, first paragraph, the limitation "viscosity is at least equal to 50 deviation units on a RHEOMAT 180 viscometer, rotor 3 at 25°C after 30 seconds" recited in claim 40 is equal to about 1.9 Pa.s., which is the same limitation recited in claim 26. In other words, both claims 26 and 40 are drawn to exact same composition with an exact same viscosity.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 26-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midha et al. (USPN 5,986,015).

Midha et al. (USPN 5,986,015) teaches a cosmetic composition comprising polymers of monomers such as acrylic acid, methacrylic acid, acrilamide, see col. 6, line 63 to col. 7 line 47. Midha et al. (USPN 5,986,015) also teaches a hair styling gel comprising 2.5 weight percent of Graft copolymer 1.2 (which comprises methacrylic acid and tert-butyl acrylate), 0.5 weight percent Carbomar 940 (a thickening agent), see particularly col. 17 lines 23-26 and col. 19, example 17. Midha et al. (USPN 5,986,015) further teaches the addition of optional ingredients such as xanthan gum (a polymeric

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thickener) to its cosmetic hair composition, see col.16, lines 14-26. Midha et al. (USPN 5,986,015) teaches that the concentration of optional ingredients will typically and collectively range from 0.05% to 30% by weight of the composition, see particularly col. 14, lines 36-46. Midha et al. (USPN 5,986,015) that the cosmetic composition is suitable for application to hair, see col. 11 line 59 in particular.

Midha et al. does not expressly teach the composition have the herein viscosity. Midha et al. does not expressly teach the employment of the herein claimed branched block copolymer and the herein claimed thickeners in a cosmetic hair gel composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ specifically the claimed branched block copolymer and the thickeners claimed herein in a cosmetic hair gel composition and adjust the viscosity to the herein claimed range.

One of ordinary skill in the art would have been motivated to employ the herein claimed branched block copolymer and the thickeners in a cosmetic hair gel composition. The herein claimed polymer as well as the herein claimed thickeners are taught by examiner's cited prior art to be used in cosmetic hair gel compositions. Incorporating these well-known hair gel components for formulating the herein claimed cosmetic hair gel composition would be obvious as considered within the purview of skilled artisan, absent evidence to the contrary. Furthermore, the optimization of result effect parameters (e.g., viscosity of the composition) is obvious as being within the skill of the artisan. Please note that the viscosity of the composition depends upon many factors such as the molecular weight of the polymers and the concentration of the

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polymer. Adjusting the concentration, thereby the viscosity, of the composition is within the purview of skilled artisan, absent evidence to the contrary.

Response to Arguments

Applicant's arguments filed October 13, 2002 averring the cited prior art not teaching the herein claimed graft copolymer as hydrophobic backbone + hydrophilic side chain, have been fully considered but they are not persuasive. In col. 7, line 56 to col. 8, line 20, Midha et al. clearly teaches graft copolymer with a hydrophobic backbone with hydrophilic side chain, which is, according to the remarks on page 3 of the response filed October 13, 2002, the herein claimed graft copolymer. For example, the polymer disclosed in col. 7, line 59 – 65, its backbone consists of four types of monomers: 2-methoxyethyl acrylate, methacrylic acid, *tert*-butyl acrylate and 4-chloromethyl styrene. Among these four types of monomer, methacrylic acid, *tert*-butyl acrylate and 4-chloromethyl styrene are considered hydrophobic because the methyl functional group in methacrylic acid, *tert*-butyl functional group in *tert*-butyl acrylate and phenyl group in 4-chloromethyl styrene are considered as hydrophobic group.

Therefore, Midha et al. still teaches the herein claimed copolymer.

Applicant's arguments filed October 13, 2002 averring the cited prior art not teaching not teaching the herein claimed non-cellulosic thickening agent have been considered but are not found persuasive. Midha et al. clearly teaches xanthan gum (a herein preferred polymeric thickening agent), can be employed in the hair gel composition of Midha et al. Therefore, incorporating xanthan gum into the hair gel

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composition of Midha et al. would have been reasonably expected to be useful. Absent evidence to the contrary, the claims are properly rejected under 35 USC 103(a).

No unanswered rebuttal arguments are present herein.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (703) 305-1002. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (703) 305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

San-ming Hui
February 6, 2003



SREENI PADMANABHAN
PRIMARY EXAMINER

2/15/03